

(2023) 01 CAT CK 0001
In the Central Administrative Tribunal
Case No : Original Application No. 524 Of 2017

Shakti Kumar

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 03-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 311(2)

Citation : (2023) 01 CAT CK 0001

Hon'ble Judges : Om Prakash VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : Shyamal Narain, Bablu Singh

Final Decision : Allowed

Judgement

Om Prakash-VII, Member (J)

1. The applicant has filed this O.A. for the following reliefs:-

a) Quash and set aside the impugned orders dated 24.1.2017 and 20.3.2017 (Annexure Nos.1 and 2 to compilation No.1 respectively), removing the applicant from service and command the respondents to reinstate him in service, with all consequential benefits.

b) Issue such other suitable orders or directions as might be found just and proper in the facts and circumstances of the present case.

c) Award the costs of this Original Application in favour of the applicant, throughout

2. The facts in brief giving rise to the present O.A. are that in pursuance of the advertisement issued by the High Explosives Factory, Khadki, Pune, inviting application for 13 posts of Multi Tasking Staff (MTS), applicant applied for the same. Applicant appeared in the written test held on 22.2.2015 and qualified in the same. Appointment letter was issued to the applicant on 24.9.2015 subject to the terms and conditions contained therein. Applicant joined the post on

6.10.2015. After joining, a show cause notice dated 10.1.2017 was issued to the applicant, alleging that his signatures, thumb impression and finger prints had been sent to two Forensic Sciences Laboratories for verification and upon receipt of reports from the said laboratories, it was evident that his signature at the time of his joining was not similar to the signatures appearing on the OMR sheet and attendance sheet obtained during the written examination and that it was obvious that he had permitted a third person to appear at the examination on his behalf. On the basis of the aforesaid allegation, and quoting clause No.6 of the offer of appointment, vide show cause notice dated 10.1.2017, applicant was directed to explain by 14.1.2017 as to why his service should not be terminated. Applicant submitted his explanation on 14.1.2017 and upon receipt of the explanation of the applicant, respondents passed the impugned order dated 24.1.2017 (Annexure No. 1), removing applicant from service. Being aggrieved of the removal order dated 24.1.2017, applicant preferred an application dated 3.3.2017 before the General Manager, High Explosive Factory, Khadki, Pune praying for review of the order dated 24.1.2017, which was also rejected vide order dated 20.3.2017 (Annexure No. A-2 to the O.A.). Applicant has challenged both order dated 24.1.2017 and 20.3.2017 in the present O.A.

3. In the counter reply, respondents have stated that applicant was issued an offer of appointment on 24.9.2015 after police verification of his character and antecedents and medical examination. Applicant reported to HEF on 6.10.2015. However, as approved by the competent authority, after his joining, International Forensic Sciences Pvt. Ltd. (IFSL), Pune was approached for verification of his signature and thumb impression based on the following documents

- a) Thumb impression available on document dated 6.9.2016 generated after his joining for the purpose of verification;
- b) Thumb impression affixed on his original application form;
- c) Signature available on document dated 6.9.2016 generated after his joining for the purpose of verification;
- d) Signature on attendance sheet obtained during the examination for recruitment held on 22.2.2015.

It is further stated in the counter affidavit that as for the report received from CFSL, signature of the applicant on document dated 6.9.2016 is similar to the signature on Original Application Form but not similar to the signatures on OMR and Attendance sheet obtained during examination. However, regarding thumb impression, it was stated that CFSL does not undertake examination of the same. Vide letter dated 27.12.2016, IFSL had intimated that the thumb impression is not clearly visible from the document named "OMR Answer Sheet" and therefore, thumb impression verification cannot be done. It is further stated that thumb impression given at the time of examination had been deliberately fudged/obliterated to avoid scrutiny on a later date. It is further stated in the C.A. that there were conclusive, categorical and unequivocal reports from two independent

and reputed forensic laboratories confirming that the applicant is not the person who had signed the documents generated on the day of examination such as OMR answer sheet and attendance sheet. Hence the action taken by the respondents is fully justified.

4. Rejoinder reply has been filed by the learned counsel for the applicant, through which he has reiterated the facts as stated in the O.A. However, along with the Rejoinder Reply, applicant has annexed a judgment and order passed by the Hon'ble High Court in the case of Ran Vijay Singh and 34 others Vs. Union of India and others (Writ A No. 2813 of 2017 decided on 16.4.2018). He has also relied upon a judgment passed by this Tribunal in O.A. No. 612/2009 connected with other OAs decided on 4th March, 2011.

5. Heard learned counsel for the parties.

6. Learned counsel for the applicant argued that show cause notice dated 10.1.2017 hardly appears to be a show cause notice. It is further argued that applicant had neither been supplied with copies of the samples of thumb impression/signatures that had been sent to the laboratories nor the reports of those laboratories that had been made the sole basis of the serious allegations leveled against him vide show cause notice. It is further stated that respondents have actually admitted in the impugned order dated 24.1.2017 that the thumb impression of the person who had applied for the examination and subsequently joined the department are similar, glossing over the fact that one of the two laboratories had found clear similarities in the thumb impression appearing on the OMR sheet (and not just the application form) and the thumb impression of the person joining the department, that is the applicant. It is further argued that due to non-supply of the reports of the laboratories, even the samples/specimens sent to them for verification, it was not possible for the applicant to make any submission challenging the findings of the laboratories. It was also argued that due to non-supply of relevant document, respondents cannot say that applicant had failed to submit any evidence either in support of his claim for challenging the finding /reports of the laboratories. Respondents had removed the service of the applicant invoking Rule 6 of offer of appointment which is wholly illegal. It is further argued that applicant had not given any false declaration, or willful suppression or concealment of any material information. It is further argued that applicant was still in probation and he was appointed against a permanent post, hence he could not validly be removed from service on the allegations leveled against him except after a full-fledged disciplinary proceeding/inquiry required to be conducted before imposing a major penalty upon a delinquent employee and the same is in violation of principal of natural justice and is against the provision of Article 311 (2) of the Constitution of India. It is further argued that it is well settled in law that the opinion of an hand writing expert cannot be treated as a gospel truth and the same can differ from one expert to another and in any case the author of the report which is sought to be relied upon for imposing a punishment, has to prove the same by entering the witness-box and submitting

himself to cross-examination.

7. Learned counsel for the respondents argued that appointment of the applicant was purely on temporary basis and until further orders. It is also argued that it is clearly mentioned in the appointment order that services of the applicant may be terminated at any time during the probationary period by either side without notice. It is also mentioned in the offer of appointment that after probationary period, the termination of service of the applicant will require one month's notice in writing on either side. Rule 6 of offer of appointment clearly states that "If any declaration given or information furnished by you is proved to be false or if you are found to have willfully suppressed any material information, you will be liable for removal from service and other action of Government may deem necessary." It is further argued that CFSL in his report specifically stated that signature of the applicant on document dated 6.9.2016 is similar to the signature on Original Application Form, but not similar to the signatures on OMR and Attendance sheet obtained during examination. However, regarding thumb impression, it was stated that CFSL does not undertake examination of the same. Show cause notice dated 10.1.2017 was given to the applicant who submitted his reply on 14.1.2017 and upon receipt of the reply, respondents have passed the impugned order dated 24.1.2017 removing applicant from service. Applicant preferred an application dated 3.3.2017 before the General Manager, High Explosive Factory, Khadki, Pune for review of the order dated 24.1.2017, which was also rejected vide order dated 20.3.2017. It is further argued that action taken by the respondents is in accordance with rules and terms and conditions mentioned in the offer of appointment. There is no illegality or irregularity in passing the impugned order. O.A. is liable to be dismissed.

8. Learned counsel for the parties were granted 03 days time to file written submission but learned counsel for applicant does not wish to file written submission even after lapse of 03 days.

9. Learned counsel for the respondents has also filed written submission, through which he has reiterated the facts as stated in the Counter Affidavit. However, he has further stated that prior to passing of the punishment order, the applicant was given an opportunity of hearing/defence by issuing a show cause notice dated 10.1.2017, directing the applicant to submit his defense/reply as to why his services may not be terminated whereupon, applicant submitted his representation dated 14.1.2017, whereby he had not enclosed any evidence to challenge the findings recorded against him. He has further stated that final opinion of the IFSL is clear that "The questioned signature sample marked as (Q-1) seems that has not been written by the same writer who have written the admitted signature sample marked as (S-1) or vice versa."

Hence the applicant is not entitled for any relief as claimed by him in the present O.A.

10. We have considered the rival submission and have gone through the entire

record.

11. In the case of Ran Vijay Singh and 34 others Vs. Union of India and others (supra), relied upon by the learned counsel for the applicant, in pursuance of the advertisement issued by the Staff Selection Commission, Allahabad for appointment to the post of Constable (GD) in Assam Rifles, BSF, CISF, CRPF, ITBP and SSB, applicants appeared in the examination and provisionally selected for appointment to the post of Constable in CRPF, but no appointment orders were issued. CRPF authorities issued notices to the petitioners, stating that there is mismatch in the handwriting and signatures of the petitioners and directed the applicants to appear at the concerned office at Allahabad to furnish their handwriting, signatures and thumb impression of left and right hand, for the purpose of its due verification by Central Forensic Science Laboratory. In reply to the notice, petitioners appeared at the designated centre and submitted their handwriting, signatures and thumb impression. After a gap of nearly one year and a half, vide letter dated 14th December, 2016, intimating the petitioners that their hand writing and signatures do not match, rejected the candidature of the petitioners. Considering the facts and circumstances of the case Hon'ble Single Judge vide order dated 16.4.2018 passed the following orders:-

"9. Although the report of Government Laboratory and opinion of its experts would be entitled to weight, particularly when no bias or mala fide is alleged, yet, being in the nature of opinion, it cannot conclusively establish impersonation on part of the petitioners. The respondents' action is otherwise not in conformity with the principles of natural justice. In such circumstances, I am of the considered view that action of respondents in cancelling petitioners' provisional selection, and debarring them from appearing in any exam conducted by the Commission for three years, is violative of Article 14 of the Constitution of India. Orders impugned dated 27.10.2016 and 14.12.2016, accordingly, stands quashed.

30. It shall, however, be open for the respondents to verify identity of petitioners upon material and evidence admissible in law by following the principles of natural justice. The required exercise be undertaken preferably within a period of four months from the date of presentation of certified copy of this order, as petitioners have already lost sufficient time. Based upon such consideration, the respondents shall take a fresh decision in the matter relating to grant of appointment to the petitioners.

31. Writ petitions are, accordingly, disposed of."

12. In the case of Sanjeev Kumar Jaiswal Vs Union of India and ors. in O.A. No. 612 of 2009 decided by this Bench of the Tribunal vide order dated 4.3.2011, relied upon by the learned counsel for the applicant, after selection, the candidates were given appointment order. Then the Staff Selection Commission informed them that there was a mismatch of signature in the specimen signature and between the signature in the written examination for which the fraud was

alleged basing on that the charges were framed and inquiry was conducted. Issue in that O.A. was that the inquiry officer conducted the inquiry solely relying upon the recommendation of the Staff Selection Commission. Hence, the report of inquiring officer and the punishment order were set aside.

13. In the present case, the applicant was removed from service on the ground that his signatures, thumb impression and finger prints had been sent to two Forensic Sciences Laboratories for verification and upon receipt of reports from the said laboratories, it was evident that his signature at the time of his joining was not similar to the signatures appearing on the OMR sheet. Applicant was issued show cause notice to explain as to why his service should not be terminated. Applicant submitted his reply on 14.1.2017 and upon receipt of the explanation of the applicant, respondents passed the impugned order dated 24.1.2017 (Annexure No. 1), removing applicant from service. The ground taken by the applicant in this O.A. is that respondents have removed the service of the applicant without issuing him a proper charge memo, without supplying him the relied upon documents and affording him opportunity to either adduce evidence or cross examine the witnesses. However, the plea of the respondents is that prior to passing of the punishment order, the applicant was given an opportunity of hearing/defence by issuing a show cause notice dated 10.1.2017, directing the applicant to submit his defense/reply as to why his services may not be terminated whereupon, applicant submitted his representation dated 14.1.2017 after considering the reply of the applicant, applicant was removed from service. It is also pleaded that it is clearly mentioned in the appointment order that services of the applicant may be terminated at any time during the probationary period without notice.

14. Hon'ble Allahabad High Court in the case of Sanjay Kumar vs. Chairman Railway Recruitment Cell North Eastern Railway & Anr. in Service Bench No. 482 of 2016 decided on 20th November, 2017, in which the petitioner was also debarred from all examinations of RRC, apart from cancellation of candidature for the examination in question. The OA filed before this Tribunal was dismissed by order which was challenged in above writ. Hon.ble High Court has held in this case as under:-

"It is further submitted by learned counsel for the petitioner that after issuing a final result of the selected candidates about a period of one year, show cause notice was issued to the petitioner in which it is mentioned that after forensic document verification, the signature on the application form and that on attendance sheet, question booklets, answer sheets are different and the petitioner was given 30 days time to explain as to why his candidature for the above post be not cancelled and he may not be debarred from all RRC examination in future.

.....

Accordingly, the argument advanced by learned counsel for the petitioner, that

no adequate opportunity has been given to the petitioner prior to passing of the impugned order, has got no force because from the perusal of the record, the position which emerges out is that show cause notice was given to the petitioner to submit his reply but he submitted an affidavit, so taking into consideration the same as well as report of the Forensic Document Examiner, the impugned order has been passed.

Even otherwise, in the present case, on the basis of the report submitted by the Forensic Document Examiner after verification, it is clearly established that the signature on the application form and that on attendance sheet, question booklets, answer sheets is not of the petitioner and the said fact has been clearly established on the basis of the report cannot be denied by the petitioner in any manner, so we do not find any illegality or infirmity in the impugned order passed by the Tribunal.

In the result, writ petition lacks merit and is dismissed."

15. In the case of *Samsher Singh Vs. State of Punjab*, AIR 1974 Supreme Court Cases, 2192, the learned Chief Justice summarized the legal position thus:

"1. Appointment to a post on probation gives the person so appointed no right to the post and his services may be terminated, without taking recourse to the proceedings laid down in the relevant rules for dismissing a public servant. or removing him from service.

2. The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him off any right to a post and is, therefore, no punishment.

3. But if instead of terminating such a person's service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or foursome similar reason, the termination of servicers by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection of Art. 311 (2) of the Constitution.

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5. But, if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct, or inefficiency, or some such cause."

16. Hon'ble Apex Court in the case of *State Bank of India and others Vs. Palak Modi* and another reported in (2013) 3 Supreme Court cases, 607 has held as under:-

"A probationer has no right to hold the post and his service can be terminated at

any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.

.....

The appellants shall reinstate the private respondents within 15 days of the production of copy of this judgment before respondent No.3 and give them all consequential benefits like pay, allowances, etc. within next one month. However, it is made clear that this judgment shall not preclude the competent authority from taking fresh decision in the matter of confirmation of the private respondents after giving them effective opportunity of hearing against the allegation of use of unfair means in the test held on 27.2.2011."

17. In this matter as is evident from record, the appointment letter was issued to the applicant on 24.9.2015 and he joined the post on 6.10.2015. Show cause notice has been issued on 10.1.2017 (Annexure No. A-15 to the O.A.). Documents relied upon by the respondents for terminating the services of the applicant have not been supplied to him, as would be evident from the record. Although the applicant was a probationer, his services may be terminated during the probation period simply issuing show cause notice and obtaining the explanation from the employee concerned, but natural justice requires that documents/ evidence which are basis for termination of service, must be supplied to the employee concerned so that he may be in a position to explain the facts. Since in the present matter, no such documents which were relied upon by the respondents to form the opinion to terminate the services of the applicant have been supplied, respondents have violated the Principle of Natural Justice and the present O.A. simply on this ground is liable to be allowed.

18. For the reasons stated herein above and in the light of the observations made by the Hon'ble Supreme Court, the O.A. is allowed. Impugned orders dated 24.1.2017 and 20.3.2017 are quashed. Respondents are directed to reinstate the applicant within 15 days from the date of production of certified copy of this order and give all consequential benefits like pay, allowances etc. within next one month. However, it is made clear that this order shall not preclude the competent authority from taking fresh decision in the matter after giving effective opportunity to the applicant against the allegation of use of unfair means in the examination.

19. There shall be no order as to costs.